

Issue: Charitable Ownership/Use

KATHARINE MANOR CONDOMINIUM) Docket No.(s) 93-22-59
ASSOCIATION, INC.) PI No.(s) 8-08-113-004
) (DuPage County)
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 Applicant)
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 v.)
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 THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS) George H. Nafziger
) Administrative Law Judge

FINDINGS OF FACT The Department's position in this matter, namely

that Applicant failed to establish that this property was owned by a charitable organization and used for charitable purposes during 1993, was established by the admission in evidence of Department's Exhibits 1 through 6A.

On June 8, 1993, the DuPage County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning the parcel here in issue for the 1993 assessment year to the Illinois Department of Revenue (Department's Exhibit 2). On February 17, 1994, the Department of Revenue notified Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Department's Exhibit 3). On March 2, 1994, Mr. J. Randolph Given requested a formal hearing in this matter (Department's Exhibit 4). The hearing held on December 12, 1994, was held pursuant to that request.

Mr. Given, who is an attorney, was present, and testified at the hearing. He stated that he had intended to bring Ms. S. Phyllis Stearner, the president of Illinois Independent Living Center, Inc. (hereinafter referred to as "IILC") who was knowledgeable concerning the operations of IILC and Applicant, to be a witness. Mr. Given stated that Ms. Stearner is a person with physical disabilities, who is elderly, and has health problems, and was therefore unable to attend the hearing. He went on to state that he was personally familiar with the operation of IILC and Applicant from having been a volunteer with IILC. He stated that he had served as the chairman of the development committee of IILC, beginning in June 1992. He thereupon requested to be sworn, and to testify on behalf of IILC and Applicant. Mr. Rybica, assistant state's attorney of DuPage County, indicated that he had no objection to this procedure. Thereupon, Mr. Given was sworn, and testified on behalf of Applicant.

Katharine Manor is a two-story, 32-unit condominium complex, located at Spring Garden Court and Iroquois Drive, in Lyle Township. Parcel No. 8-

08-113-004, the parcel here in issue, identifies Condominium Unit 106 in this complex. Unit 106 is a one-bedroom unit. The Declaration of Ownership and Bylaws provides that at least one person who occupies a unit in this complex must be a person with disabilities, who qualifies as a low or moderate-income person, pursuant to HUD guidelines.

IILC, using Community Development Block Grant Funds received from DuPage County as subgrantee, acquired the property, and developed the complex. Some of the condominium units were sold to individuals or families which had a family member who was a person with disabilities, and also met the low or moderate income standard. A number of the units, during 1993, were owned by IILC and rented out, several were owned by limited partnerships, and two were owned by Applicant.

Applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on June 12, 1987, for purposes which included the following:

"To facilitate the administration and operation of the Katharine Manor Condominium, located at 1141 E. Iroquois Drive, Naperville, Illinois; to act as and operate as the Condominium Property Act, and the Katharine Manor Decalrations and ByLaws of Condominium Ownership; and to do any and all acts authorized under and pursuant to the General Not For Profit Corporation Act of 1986, as may be amended from time to time."

On October 3, 1989, the Articles of Incorporation of Applicant were amended. The purpose clause of said Articles, as amended, reads in part as follows:

"Said Corporation has been and shall continue to be organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or any corresponding section of any future federal tax code."

Applicant is an unusual entity, in that it is not only a condominium association, but also qualifies as exempt from Federal Income Tax, pursuant to Section 501(c)(3) of the Internal Revenue Code.

IILC is either the owner or the manager of the units not owned by individuals, in this complex. I take Administrative Notice of the fact that the Director of Revenue determined that units owned by IILC in this complex qualified for exemption from property tax in Docket Nos. 92-22-203 through -208, and 92-22-210 through -215.

Applicant owns two units in this complex. One is the parcel here in issue. These two units were conveyed by IILC to Applicant after it was discovered that Applicant could obtain DuPage County Community Block Grant Funds that were not available to IILC. During 1993, IILC acted as manager of the units owned by Applicant, pursuant to the same governing documents and rules, as it operated the units which it owned. The persons leasing the unit here in issue, as well as the other Applicant-owned unit, and the IILC units, must be disabled persons of low or moderate income, who are capable of handling their own finances and capable of living independently, with the help of an attendant service. The attendant service helps them in and out of bed, to bathe, and to dress. Many of the residents of Katharine Manor are quadriplegics.

During 1993, Applicant rented the parcel here in issue to Charles and Sandra Lapore. The monthly rent was \$586.00, which included rent, maintenance, and utilities. IILC, as manager and Applicant, both had a policy not to evict anyone because of inability to pay. In fact, IILC and Applicant waived or reduced, rent in cases of need. Applicant and IILC also waived or reduced the security deposits, in cases of need. In fact, the \$50.00 security deposit posted, concerning the unit here in issue, was a reduced amount.

1. Based on the foregoing, I find that Applicant owned the parcel here in issue during 1993.

2. I find that since IILC and Applicant waived or reduced all charges and fees in cases of need during 1993, that the benefits of the services of

IILC and Applicant were available to an indefinite number of persons, that charity was dispensed to all who needed and applied for it, and that no obstacles were placed in the way of those seeking the benefits.

3. I find that Applicant had no capital, capital stock, or shareholders during 1993, and did not profit from the enterprise.

4. Applicant's funds were primarily derived from public and private charity, and were held in trust for the objects and purposes expressed in its charter, during 1993.

5. I find that IILC and Applicant used the parcel here in issue for charitable purposes during the 1993 assessment year.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims

the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that IILC and/or Applicant met each of the foregoing six guidelines, concerning the parcel here in issue during the 1993 assessment year.

Based on the foregoing, I conclude that Applicant is a charitable organization, and that it owned the parcel here in issue during the entire 1993 assessment year.

I further conclude that Applicant and IILC used the parcel here in issue for charitable purposes during the 1993 assessment year.

I therefore recommend that DuPage County parcel No. 8-08-113-004 be exempt from real estate tax for the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995